Supreme Court, U.S.
FILED
NOV 26 1990
JOSEPH F. SPANIOL, JR.
CLERK

(12)

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF
THE COMMONWEALTH OF
MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF AND
APPENDIX IN SUPPORT OF
PETITIONER

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Amicus Curiae

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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER AND THIS COURT GRANTING HER PETITION

Now comes JOHN RAKUS, ESQ., President of the California Justice Foundation and moves for leave to file the attached brief as Amicus Curiae in support of Petitioner and this Court hearing her Petition.

This motion is being filed as the opposing party, Supreme Judicial Court, and Bar Counsel have not returned the written consent required of United States Supreme Court Rule 37.2.

Pursuant to United States Supreme Court Rule 37.1, Amicus wishes to bring to the Court's attention relevant matter which has not already been brought to its attention and which has not been raised by the parties. That relevant information concerns the need for a declaration of unconstitutionality of the State Bar Court of the California State Bar Association by reason of its multiplicity of conflicts in being a Court because of its private, pecuniary, profit-making, political, and entrepreneurial activi-

ties and its agency status for a private trade group involved in coerced association.

Amicus believes that those activities are dispositive of the issue as to whether another state may treat such a private State Bar Court as if it were a court of law entitled to Full Faith and Credit or Comity.

For the foregoing, Amicus requests the attached factual information explaining those conflicts be permitted to be considered in this Honorable Court's decision to hear this serious Petition.

RESPECTFULLY SUBMITTED,

JOHN RAKUS, ESQ.
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Amicus Curiae

QUESTION PRESENTED

1. Does the Due Process clause of the United States Constitution permit a private membership Bar Association to create a State Bar Court to license lawyers when that Court is the agent of a private membership trade group involved in coerced association and other conflicting personal, profit-making, entrepreneurial, partisan, pecuniary and lobbying activities ?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows :

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AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

The Interest of Amicus

Applicant respectfully requests permission to appear to file an Amicus Curiae brief in support of Petitioner. He does so both on his own benefit personally and on behalf of the

California Justice Foundation. As duly licensed attorneys and registered voters, their mutual concern is that citizens not be coerced into forfeiting their reserved powers under the Tenth Amendment.

Applicant believes this Court should not tolerate deviations from this court's clear decision in Keller, of California 495 U.S. ____ , 110 L. Ed. 2d. 1, 110 S. Ct. ___June 4, 1990. Amicus believes that an alleged State Bar Court is unconstitutional as the California State Bar Association is a private trade group. This is the appropriate and may be the only Petition in which this issue can now be resolved as there will be no decisions of the state's highest court, the Cal-

ifornia Supreme Court, for this Court to review. The California Supreme Court has now passed rules asserting that they no longer will review all attorney discipline cases, but will deny review to some attorneys. As such, their denial of hearing a Petition makes the alleged order of the bar association the judicial order of suspension or disbarment on a claim that the bar association may have a " State Bar Court."

Constitutional and Statutory Provisions Involved

United States Constitution: Amendment 1. Congress shall make no law ... abridging the freedom of speech, ...; or the right of the People ... to petition the Government for a redress of

grievances.

Amendment V. No person ... shall be deprived of life, liberty, or property, without due process of law...

Amendment XIV, section 1. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The California Constitutional and statutory provisions appear at the Appendix at A.

Summary of Argument

The Judgment of the Supreme

Judicial Court of the Commonwealth of Massachusetts should be reversed as the California system based on an alleged State Bar Court is constitutionally inadquate. Such an alleged private court was not created by the sovereign power of the People. It is an agent of a private membership trade group and is disqualified from being a court due to its principal's involvement in a multiplicity of private, pecuniary, political, lobbying, and entrepreneurial activities at odds with the requisite neutrality and non-partisanship of a Court of law.

Argument in Support of the Petition

I.

A substantial federal question arises when California attorneys are the only ones licensed by a private court

The implications of having one state's lawyers licensed by a private court instead of their constitutionally-authorized and public admitting court are far-ranging. California is the most populous state in the United States. With a population of 30 million citizens, its people comprise more than the populations of 21 other states and the District of Columbia combined. One out of every eight United States citizens resides in the State of California. They are twelve percent of all United States citizens. Their attorneys number in excess of 122,000.

If California attorneys are no longer available to assist this large population, out of fear their

opponent will have them disbarred or suspended if they sue select persons, then it is doubtful the rule of law can be maintained.

One state's lawyers will have to comply with a private opponent's standards while the rest of the attorneys in the United States must only comply with their admitting court standards.

Prohibitions on private courts emanates from the Magna Carta. Historically, the King sent out couriers or bailiffs to hold courts of common pleas in the countryside. This was done without notice. The couriers or bailiffs often confiscated the goods or property of peasants it adjudged guilty and kept those goods as payment to themselves.

Lord Coke in his Commentaries on the Magna Carta spoke of this corrupt practice and its abolition with a requirement that the King's representatives be paid solely out of the public coffers and not by private money. Since that time it has not been doubted that a private court could not exist in our Democracy.

There is a substantial difference between public and private power. Public courts are taxpayer funded. Their officers in the state courts are elected and removable by the voters. Their proceedings are open to the public. Any deficit in mental, legal, or psychological competency of any judge can be redressed through the ballot box and/ or proceedings before a Commission to

remove the judge. There are no other duties of the public courts other than to decide cases. They can not have private, profit-making or entrepreneurial functions. They can not lobby on a variety of political issues. Their structure is such that they are not involved in inherent conflicts of interest as is the California State Bar Association. No private monies fund the operations of the public Courts.

There is a significant Federal question. If due process of law permits licensing of California's " Court Officers" by their own private opponents and competitors, the quality of legal representation will suffer and all citzens will suffer.

California prides itself on be-

ing a leader in the nation. There is even a saying, " So goes California, so goes the nation." What will happen nationally to the legal profession and the quality of legal services if attorneys are too frightened to represent members of the Public ?

II.

The State Bar Court is unconstitutional as it is the agent of a corporation involved in coerced association

A " Court," within the meaning of the Constitution is a permanent tribunal for the administration of Justice, and not one of those special tribunals which are occasionally called into existence by particular exigencies and that cease to exist with such need. Shurbun v. Hooper (1879) 40 Mich. 503. Consent

cannot create a Court. Norwood v. Kentfield (1867) 34 C. 329. The creation of the courts is an affair of government, and may not be subordinated to private convenience or private interest. Martello v. Superior Court (1927) 202 C. 400, 261 P. 476. Courts are organized for the purpose of determining the controversies between litigants according to their respective rights. Warner v. Thomas (F.) Parisian Dyeing and Cleaning Works (1895) 105 C. 409, 38 P. 960.

A Court must be the agent of the State and represent the sovereign power of the People. It may not be created by and for private, unelected persons. Article 4, section 16 of the California Constitution specifically prohibits such

special interest, private legislation as a statute delegating to 23 private, unelected persons the power to create a private state bar court.

In 1966, the People abolished all legislalative authority to create any new courts in the state of California, reserving to themselves the power directly to vote to create any new court. No one voted to create a State Bar Court. It is, therefore, void under Article 6, sections 1 and 9, article 4, sections 1 and 16, article 3, section 3, and article 2, section 1 of the California Constitution.

The State Bar Association is composed of automatic attorney members who are licensed to practice law by the state supreme court.

Article 6, section 9, Ca. Constitution. Attorneys are not Public officers, but are private, unelected persons selected to aid in the conduct and presentation of cases and disputes before the constitutional courts of law, are selected by their admitting state supreme court, and are " Court Officers," but not Public Officers of the state. In re: Cate, (1928) 273 P. 617, supplementing opinions 270 P. 968 and 271 P. 356, Clark v. Willett (1868) 35 C. 534.

A. If the State Bar is an arm of the state as a Public Corporation, then private attorneys may not be forced to be automatic members or pay for it

Compelled private association with and coerced private membership with a state unit of political power, as a condition of working in a

state, is Communism and is unconstitutional under the First Amendment guarantees of freedom to refuse to associate with a unit of state power. See Pacific Gas and Electric Co. v. Public Utilities Commission (1986) 475 U.S. 1, 10-11, 106 S. Ct.903, 908-909, 89 L. Ed.2d.1; Roberts v. United States Jaycees (1984) 468 U.S. 609, 623, 104 S. Ct. 3244, 3252, 82 L. Ed. 2d. 462, (The first amendment protects an individual's rights not to associate and not to speak).

In Keller, supra, this Court held attorneys may be required to join a bar association. What is not addressed is whether they can be required to join it when it claims it is not a private trade group but asserts it is part of

the government as the agent of the legislative branch. The court considered that attorneys generally prefer a measure of advisory self-regulation to being regulated by a state government distant from problems of the legal profession.

The fallacy is that California attorneys do not have advisory self-regulation. No member, in fact, votes on their standards of comportment or any processes. The California State Bar Association lobbyist, with no vote from any compelled member, lobbies the legislature to pass the statutes their 23 member board or paid staff wants. No member ever voted on whether the state bar association should be permitted to have a private court or private judges.

No voter in the state did either.

The issue goes beyond trade unionism, where the compelled association and membership is with other private persons. The designation of the State Bar as a " Public Corporation " under Article 6, section 9, of the California Constitution and the state statutes allowing the Governor and a member of the Assembly and Senate to select members of the State Bar's Board of Governors virtually ensures that the State Bar Association acts as an agent of the State legislature and not the agent of the compelled members.

If private attorney membership is automatic with a public unit of state power, California attorneys, unlike all other attorneys in the

United States, are forced to be compelled members of a Soviet-style, state-run, but privately-financed Collegia or Collectiva. See Mayda, " Lawyers under Communism: A 'New' Legal order in Czechoslavakia, 39 A.B.A.J.1071 (1953); Peselj, Legal Trends in ' People's Democracies," 22 Geo. Wash. L. Rev. 513, 551-552 (1954); Note 45 Schweizerische Juristenzeiteng 48 (1949). The statement of the majority in the California's Supreme Court decision in Keller v. State Bar, supra, that, " The California Constitution, statutes, and judicial decisions, however, appear to envision the bar as a governmental agency," Keller v. State Bar, 767 P. 2d. 1020 (1989), at p. 1025, now carried to the extreme of assertin

that the state bar may have a private court and private judges to license lawyers, appears to be a repudiation of common sense.

The conclusion that California attorneys are compelled to be a unit of state power against their will and without their consent in order to work with their licenses to practice law is different from joining a trade group whose existence is limited to trade interests and where no public power is claimed or exercisable.

What is here involved is not trade unionism, but trade group communism.

All of the statutes at issue strike at the heart of the rights of freedom to refuse to associate with and to finance activities of a

state-run collegia of California attorneys, run and controlled, not by their own members, but by the state. Article 6, sec. 9, Ca. Constitution, Ca. Business and Professions Code sections 6000, 6001, 6002, 6003, 6004, 6005, 6007, 6086.5, 6079.1, 6031, 6125, 6126 (b).

Unlike Abood v. Detroit Board of Education, (1977) 431 U.S. 209, 235, 97 S.Ct. 1782, 1799, 52 L. Ed.2d. 262, Machinists v. Street, 367 U.S.740, NLRB v.Employee's Department of Hanson, 353 U.S. 225, the issue is beyond compulsory payment of dues to a private membership trade group. Here the coercion is to affiliate directly with the state in order to work in the entire state. Article 6, section 9,

Ca.Constitution, Ca. Busn.and Professions Code section 6002.

The government may not require an individual to relinquish rights guaranteed to them by the First Amendment as a condition of employment. Elrod v. Burns, 427 U.S. 347, 355-357; Perry v. Sinderman 408 U.S. 593; Keyishian v. Board of Regents, 385 U.S. 589. Among those freedoms must be the freedom to refuse to be automatic and forced members of a public corporation, a unit of state government in power. see Pacific Gas and Electric Co. v. Public Utilities Commission (1986) 475 U.S.1, 10-11, 106 S.Ct.903, 908-909, 89 L.Ed.2d.1; Roberts v. United States Jaycees 1984) 468 U.S. 609, 623, 104 S.Ct.3244, 3252, 82 L.Ed.2d.462.

As stated in West Virginia Bd. of Ed. v. Barnette, 319 U.S.624, 642, the Constitution prohibits the State Supreme Court trying to order private lawyers to be a member of a desired Public group and believe in it and support its political agenda as follows :

" If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

Lawyers are licensed to be " Court Officers." Ex Parte Garland, (1867) 71 U.S. (4 Wall) 333, Ex Parte Robinson, 19 Wall.513 (1873); Erdman v. Stevens, C.A. N.M., 458 F.2d. 1205, cert. denied 93 S.Ct.126, 409 U.S. 889, 34 L.Ed. 2d 147. They are not instruments of

the state legislature. In Ex Parte Garland, supra, at page 378, the United States Supreme Court made clear that a legislature does not license " Court officers," as follows :

" The profession of an attorney and counselor is not like an office created by an act of Congress, which depends for its continuance, its powers and its emoluments, upon the will of its creator, and the possession of which may be burdened with any conditions not prohibited by the Constitution. Attorneys and counselors are not officers of the United States; they are not elected or appointed in the manner prescribed by the Constitution for the election and appointment of such officers. They are officers of the court; admitted as such by its order,... the order of admission is the judgment of the court... From its entry the parties become officers of the court... "

An Attorney's oath is to the People and their Constitutions, and not to a state government in power.

Ca. Business and Professions Code section 6067, 6068.

The assumption that the police power of a state may be used to create lawyers into a " public corporation," Keller v. state bar, 767 P.2d. 1020 (Cal. 1989), at p. 1026, but then jumping to the assumption that that power may then be used to herd private attorneys into " Goose-stepping state brigades," assumes that the police power may be used to force allegiance to the public policies of a legislature, governor, and supreme court presently in power in order to work in the state. (1) Keller v. state bar, supra, at p. 1026.

(1) Justice Douglas, Lathrop v. Donohue, (1960) 367 U.S. 843. 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628.

By said reasoning, doctors can be forced to be an instrument of the state as a " Public Corporation," under state control, as can dentists, veternarians,accountants, football players, judges, butchers, bakers, and every occupational group in the state, and solely by reason of their occupation, and the state may force them to be members of these public corporations and do public and governmental duties in order to work in the state. Thus, private trade unions become state- sponsored and controlled trade unions, as exists in Communist China.

What is the effective difference between forcing people to pledge allegiance to the flag and forcing them to pledge allegiance

to a public corporation in power ? West Virginia State Board of Education v. Barnette (1943)

In one, the right to obtain a public school education is lost, but in the other, the right to use that public school education to protect the People's constitutional rights not to be forced to pledge allegiance to the Government is lost as the People's Lawyers are forced to pledge allegiance to a particular state government in power themselves. Attorneys can not sue the Government to protect the People from it, as they are part of the Government.

B. Since compelled private members are required to pay private dues to finance a prohibited private court, the state bar court is unconstitutional

In addition to the compelled membership with the state bar association in order for lawyers in California to work, Ca. Business and Professions Code sections 6000, 6001, 6002, these coerced private lawyers are also compelled to pay it dues for purposes without audit, vote, or any fiscal oversight. Ca. Business and Professions Code sections 6125, 6140, 6141,6140.5,6141, 6143, 6001, 6010-6015. Should they fail to pay the annual compelled membership fee to the state bar association, they are suspended as members of the bar, but also they are unable to use their license to practice law from the State Supreme Court. Ca. Business and Professions Code sections 6143, 6125, 6126 (b).

Although the California Consti-

tution makes clear the membership is to be automatic, rather than discretionary with the bar, the state bar has passed statutes claiming it can change membership in its association for any reason at all without misconduct or non-payment of dues. Ca. Business and Professions Code section 6007 (c). With the state bar claiming it can prevent licensed attorneys' working by enrolling them as an inactive member of their bar association, this effectively gives the private trade group the judicial power the People placed elsewhere in their Constitution and places it in the hands of solely private people.

The California Supreme Court's authorization for this private judicial power in Conway v. State

Bar, 47 Cal. 3d. 1107 (1989), is contrary to all of the prior cases limiting the California State Bar Association's existence to being an advisory group. Carpenter v. state bar, (1931) 295 P. 23, 211 C. 358; Hill v. State Bar of California, (1940) 97 P.2d.236, 14 C. 2d. 732.

Originally the state statutes creating a State Bar Association with such judicial power were declared unconstitutional and the statutes were upheld only on condition the State Bar never, in fact, possess such judicial power. In re: Cate, Supra.

When passed, the Board of Governors of the State Bar, which was a democratically-organized representative cross-section of the

attorney members, fixed the fee to be charged and when the fee was used solely to defray the necessary costs of running an advisory volunteer disciplinary group as an adjunct to advisory recommendations for the state supreme court. There was no paid staff, no non-lawyer or public board members, and the Bar Districts represented an equal apportionment of votes for all compelled members. There were no paid employee prosecutors, no paid officers, and no extra-curricula and profit-making or proprietary functions involved. Herron v. State Bar of California, (1944) 147 P. 2d. 543, 24 C.2d. 53, certiorari denied 65 S.Ct.82, 323 U.S. 753, 89 L.Ed. 603, rehearing denied 65 S. Ct.128, 323 U.S. 815, 89 L. Ed.

Whatever justification under the Police Power as a regulatory measure was then warranted in order to accomodate the desire for advisory self-regulation among lawyers, so that they could fulfill their duties to the separate branch of the Judiciary, rather than be faced with a conflict in being regulated by the legislature, whom they might have to sue, is no longer applicable to the facts and circumstances of the California State Bar Association, which is now a unit under the legislature's control and not under the Judiciary.

The justification for dues was for advisory self-regulation concerning infractions involving professional misconduct. Now the dues

are used for a wide variety of personal, political, proprietary, and profit-making purposes as well as bringing those political goals into the disciplinary apparatus impermissibly by prosecuting lawyers for political and not legal goals. Since the dues are no longer used for police power purposes of self-regulation, the compelled membership, the dues, and the use of the dues, including for an alleged State Bar court, are all outside the scope of the police power of a state. The Police power of the state is a law of necessity, and is exercisable only if there is a necessity for the Public's health, safety, morals, and welfare, which prohibits special interest legislation, such as an alleged State

Bar court.

Statutes are constitutional only when they are used to protect the rights of all people. Pearson v. Great National Railway Co. 161 U.S. 646, 40 L. Ed. 838, 16 S. Ct. 705. The interest of the People is their attorneys' independence of state, coerced affiliation. The Police Power is a law of Necessity and is exercizable only for necessity. Miller v. Board of Public Works, 195 Cal. 477, 234 P. 381, 38 ALR 1479, error dismissed. There being no necessity in compelling private attorneys, without their consent, to finance a prohibited special interest, trade group court modeled on those of Communist China, the statute creating an alleged State Bar court is not for

the People's welfare, but against it, and is void under the due process clause of the United States Constitution.

III.

The State Bar Court is unconstitutional as it is privately run without Public approval, audit, or accountability

The fact that the State Bar is not subject to any controlled state audit or accountability for its financial commitments to and for its alleged State Bar court invalidates the alleged State Bar court, as all courts must be responsible fiscally and subject to state oversight control in order to exist. As stated in the Opening Brief in Keller v. State Bar, United States Supreme Court,docket no. 88-1905, p. 3, " Although the Bar must

submit its proposed budget to the Legislature, it does not require legislative approval nor is it subjected to the review processes applicable to other state budgetary items, most notably the Governor's line item veto power. Compare Cal. Busn. and Prof. Code s. 6040.1 with Cal. Consti. IV,s. 10 (b). In fact, the Bar may even compel the Legislature to maintain the annual membership fee at a certain level. See Cal. Bus. and Prof. Code section 6008.5." As stated at p. 4, " The Board of Governors of the State Bar has broad ranging powers under the State Bar Act. In addition to being exempt from the state procedures outlined above, the board may also appropriate and disburse funds without

specific legislative approval or action on the party of the State Controller. Compare Cal. Busn. and Prof. Code section 6028 with Cal. Consti. Art. XVI, s. 7."

Because all courts must be subject to public approval, scrutiny and oversight, and accountability and they must be financed out of public and not with private funds, the State Bar court is unconstitutional under the Due Process of law clause of the State and United States Constitutions as none of the public accountability applies.

IV.

The State Bar Court is unconstitutional as it is the agent of a corporation involved in private activities

A. The state bar's activities involve profit-making, proprietary, and entrepreneurial activities

The State Bar is involved in a multiplicity of activities with compelled dues that involve proprietary functions normally reserved to the free market and free enterprise. One such activity is an exclusive contract with the Los Angeles Daily Journal Corporation for it to publish the official State Bar magazine, California Lawyer, which issues monthly and which yields the Journal Corporation approximately three million dollars in advertising revenues. Those funds have then been used to buy up private, independent, legal newspapers such as The San Jose Post Record and The Advocate Journal, thereby lessening their own competition and restricting the independence of the legal news

and dissemimination of dissenting and other views contrary to the official policy of the California State Bar association.

This lucrative, monopolistic contract is consummated without the vote of the compelled membership, and it yields a substantial restriction on the freedom of the press by giving a monopolistic advantage through the name lending to this private newspaper chain.

Another proprietary function, normally reserved to the free market and free enterprise, is that of publication of law books. The California Continuing Education of the Bar uses the name of the California State Bar Association to promote its series of books and its

profit-making seminars and tapes. The exact parameters of the relationship, financial and otherwise, are not fully known. Suffice it to say that the state bar's position on issues is a favored one. The use of the official name, without the consent or approval of the compelled members,is without their authorization.

In addition, the State Bar is involved in making a profit from its sponsored lectures, tapes, and books and other items it sells. In addition, they are seeking to license para-legals, which will restrain any possible competition by licensed para-legals to that of any lawyer, thereby monopolizing commerce in legal services more than at presently, and which will

also yield additional funds from this profit-making venture for their political, lobbying, and other non-regulatory activities.

B. The state bar's activities involve impermissibble political and lobbying activities

The Judicial Code of Conduct and the Hatch Act prohibit those who are engaged in the business of a " Court " from being involved in political activities, other than as private individuals. refer California Code of Judicial Conduct, Canons 1, 2 (B), 3(A)(1), 3(C),5, and 7.

This is not true of the alleged State Bar Court. Its principal, that finances, runs, and operates it, the State Bar, has a full-time Lobbying DeDepartment. It is finan-

ced without consent of any attorney. The lobbying is done without the consent of the members. It takes positions and lobbies for statutes that are recommended, not by the automatic members, but by those who are permitted to attend the Conference of Delegates, which involves solely those who are members of voluntary local bar associations. Refer Petitioner's Opening Brief in Keller, supra, at p.6. It also lobbies for and has statutes passed for its own self-interest, without any vote of any member, such as the State Bar court statute involved, and the accompanying statutes purporting to transfer licensing of court officers from the Judicial Branch to the Legislative branch of Government. Ca. Bus-

iness and Professions Code sections 6007 (c), 6086, 6086.5, 6125, 6126 (b).

As the Petitioner's Opening Brief in Keller v. State Bar indicated, supra, p. 25 and their Reply Brief at p. 12, the State Bar lobbies for and submits Amicus, without consent of the members, on a wide-ranging spectrum of bills, involving Nuclear freezes, environmental protection, armor-piercing bullets, and any matter that some consider is an " improvement of the laws."

In addition, it privately finances and runs a " Clients Security Fund." The fund determines which victims are to be paid restitution when harmed by their attor-

neys. It also runs a " Prisoner on Parole " program to assist those on parole. In addition, it pays for and runs a California Young Lawyers Association in order to encourage all attorneys under 35 to become active with their membership activities. It also finances grants of up to 20 million dollars for legal services programs. In addition, it favors and sponsors the local bar associations by financing for them the Conference of Delegates. In fact, the voting that takes place in the California State Bar Association is not done by members of the State Bar, but solely the representatives of the local bar associations.

In addition, it has practial training programs for law students,

a group insurance program, a Lawyers Personal Assistance Program to assist attorneys with drug or alcohol problems, a Court Reform Efforts program, a legislation program, an unauthorized practice program, a personal Building Fund program, a Legal Services Trust Fund program, and an " " Ethics Hotline."

All of these special and private interests are supported to the exclusion of other interests. No court of law could ever be permitted to engage in such private activities which favor some while disfavoring other interests. With the State Bar Court a mere agent of all these private interests, and responsible for making sure their employer's programs are successful,

it lacks the neutrality, focus, and concentration necessary for a court of law and is involved in irreconcilable conflicts of interest.

The State Bar court should be declared unconstitutional as it is a political arm of a political organization, whose principal purpose is political aggrandizement. A proper court under the due process of law clause can not be the agent of a political entity, as is the State Bar court, as Courts must be independent, neutral, and non-partisan. It is unconstitutional as it does not adhere to the Hatch Act or the prohibitions of the Judicial Code, a sine qua non, of a court of law.

CONCLUSION

The financing of the Courts is a matter for public allottment, and not private coerced dues of attorneys. Amicus requests the State Bar court be declared unconstitutional as it is privately created, privately financed, and privately run, with no fiscal or political oversight and is the agent of a private membership group, which engages in political, personal, and proprietary functions at odds with the requisite independence, neutrality, and non-partisanship required of a court of law in the United States.

RESPECTFULLY SUBMITTED,

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APPENDIX

California Constitution :

Article 11, section 1. All political power is inherent in the People. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.

Article III, section 3. The powers of state government are legislalative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by the Constitution.

Article VI, Section 1. Judicial Power: Courts: The judicial power of this state is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts. All ... courts

are courts of record.

Article VI, section 9. The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge of a court of record.

California Statutes

(underlining denotes 1989 changes)

Ca. Business and Professions Code Sections :

Section 6000. Short Title. This chapter of the Business and Professions Code constitutes the chapter on attorneys. It may be cited as the State Bar Act.

Section 6001. State Bar; perpetual succession; seal; powers; revenue, laws applicable. The

State Bar of California is a public corporation.....

No law of this state restricting or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes therof, including but not by way of limitation, the provisions (commencing with Section 11000), Division 4 (commencing with section 16100), and part I (commencing with Section 18000) and Part 2 (commencing with Section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the legislature so declares.

Section 6002. Members. The members of the State Bar are all persons admitted and licensed to practice

law in this state, except justices and judges of courts of record during their continuance in office.

Section 6002.1 : Official membership records; maintenance of information ; service of notice initiating proceedings; availability of information on records; forms of reports .....

(c) The notice initiating a proceeding conducted under this chapter may be served upon the member or former member of the State Bar to whom it is directed by certified mail, return receipt requested, addressed to the member or the former member at the latest address shown on the official membership records. The service of the mailing is complete at the time of mailing

but any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the notice is served by mail shall be extended five days if the place or address is within the state of California, wo days if the place of address is outside the state of California but within the United Statesm and 20 days if the place of address is outside the United States.

Section 6003. Classes of members. Members of the State Bar are divided into two classes: (a) Active members (b) Inactive members.

Section 6004. Active members. Every member of the State Bar is an active member until, by action

of the board of governors as in section 6007 of this code provided or at his request, he is enrolled as an inactive member.

Section 6005. Inactive Members. Inactive members are those members who have requested that they be enrolled as inactive members or who have been enrolled as inactive members by action of the board of governors as in Section 6007 by this code provided.

Section 6006. Retirement from practice; Privileges of inactive members. Inactive members are not entitled to hold office or vote or practice law. Those who are enrolled as inactive members at their request may, on application and payment of all fees re-

quired, become active members. Those who are enrolled as inactive members *** as in secion 6007 of this code provided may become active members as in section 6007 provided.

Inactive members have such other privileges, not inconsistent with this chapter, as the board of governors.

Section 6007 (c) (1).... Involuntary, inactive enrollment. (c) (1) the Board (of Governors of the California State Bar Association) may order the involuntary inactive enrollment of an attorney upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public .....

(2) In order to find that

the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or the public pursuant to this subdivision, each of the following factors shall be found based on all the available evidence, including affidavits:

(A) The attorney has caused or is causing a substantial harm to the attorney's clients or the Public.

(B) The attorney's clients or the public are likely to suffer greater injury from the denial of the involuntary inactive enrollment than the attorney is likely to suffer if it is granted, or there is a reasonable likelihood that the harm will reoccur or continue. Where the evi-

dence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shall shift to the attorney to show there is no reasonable likelihood that that harm will reoccur or continue....

(C) There is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter.

(3) In the case of an enrolment under this subdivision, the underlying matter shall proceed on an expedited basis.

(4) The filing of a recommendation of disbarment after hearing or default, creates for purposes of this subdivision, a rebuttable presumption that the factors enumerated under paragraph 2) are

established. The presumption described in this section is one affecting the burden of proof as defined in section 605 of the Evidence Code.

(5) The board shall formulate and adopt rules of procedure to implement this subdivision.

In the case of an enrollment pursuant to this subdivision, the board shall terminate the involuntary inactive enrollment upon proof that the attorney's conduct no longer poses a substantial threat of harm to the interests of the attorney's clients or the public....

Section 6086.5. State Bar Court; establishment; powers; rules. The board of Governors shall establish

a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of section 6007 to the extent provided by rules adopted by the Board of Governors pursuant to this chapter. In these proceedings the State Bar Court may exercise the powers and authority vested in the board of governors by this chapter, including those powers and that authority vested in the committees of, or established by the board, except as limited by rules of the board of governors within the scope of this chapter.

For the purposes of Section 6007, 6049, 6049.2, 6050, 6051, 6052,6077 (excluding the first

sentence), 6078, 6080, 6081, 6082, " board " includes the State Bar Court.

Nothing in this chapter shall authorize the State Bar Court to adopt rules of professional conduct or rules of procedure. The Executive Committee of the State Bar Court may adopt rules of practice of the conduct of all proceedings within its jurisdiction. These rules may not conflict with the rules of procedure adopted by the board, unless approved by the Supreme Court.